

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of AL D. CREMEENS and U.S. POSTAL SERVICE,
POST OFFICE, Peoria, Ill.

*Docket No. 97-2219; Submitted on the Record;
Issued April 9, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has established that he sustained an injury while in the performance of duty on December 13, 1995.

The Board has duly reviewed the case record on appeal and has determined that appellant failed to establish that he sustained an injury on December 13, 1995 or that he sustained recurrence of disability on June 20, 1996.

In this case, appellant alleged that he injured his rotator cuff and left shoulder while in the performance of duty on December 13, 1995 and sustained a recurrence of disability on June 20, 1996 based on the December 13, 1995 incident.

By letter dated September 30, 1996, the Office of Workers' Compensation Programs advised appellant that he needed to submit additional information regarding his claim for compensation, including an explanation as to why he did not report his December 13, 1995 incident until September 14, 1996. The Office also required appellant to submit all medical evidence regarding treatment from December 13, 1995 to June 20, 1996 and all medical evidence after June 20, 1996 concerning his alleged recurrence of disability.

Appellant thereupon submitted June 17, 1996 x-rays which were read as normal and an August 1, 1996 left shoulder magnetic resonance imaging (MRI) scan which revealed tendinitis rotator cuff tear with minimal joint effusion. In an August 28, 1996 medical report, Dr. Jeffrey R. Garst, appellant's treating physician, stated that he had treated appellant that day for a left shoulder condition, noting that appellant had injured his shoulder in a December 1995 work-related injury. Based on his reading of appellant's MRI scan, Dr. Garst opined that appellant had sustained a frozen shoulder with possible rotator cuff tear. In a September 25, 1996 medical report, Dr. Garst noted that he rechecked appellant's left shoulder that day and determined that his frozen shoulder was responding to therapy.

On November 7, 1996 the Office denied appellant's claim on the grounds that the medical evidence of record did not establish that he had sustained a work-related injury on December 13, 1995 and that he had not sustained a recurrence of disability on June 20, 1996.

In a letter received by the Office on January 21, 1997, appellant requested reconsideration. In support of his request, appellant included a November 15, 1996 medical report from Dr. Garst.

On May 7, 1997 the Office denied appellant's request for reconsideration in a nonmerit decision on the grounds that the evidence submitted had already been considered by the Office.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.¹

The medical evidence required to establish a causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.²

In this case, appellant failed to submit a rationalized medical opinion which established that he had sustained a work-related injury on December 13, 1995 or a recurrence of disability on June 20, 1996. Dr. Garst's medical reports did not include a rationalized medical opinion establishing that appellant's condition was caused by a December 13, 1995 work-related injury, nor did he explain how appellant sustained a recurrence of disability on June 20, 1996. Dr. Garst merely opined that a "frozen shoulder" usually takes time to develop after an incident and that such a condition is usually manifest in an MRI scan rather than in an x-ray. Although a subsequent MRI scan did reveal a rotator cuff tear, Dr. Garst did not provide a well-reasoned medical opinion establishing that the medical condition was causally related to the December 13, 1995 incident. The Board has held that an award of compensation may not be based on a physician's surmise there is a causal relationship between a medical condition and employment.³ Appellant has not met his burden of proof in establishing fact of injury on December 13, 1995.

¹ *Ruby Fish*, 46 ECAB 276 (1994).

² *Charles E. Burke*, 47 ECAB 185 (1995).

³ *Alberta S. Williamson*, 47 ECAB 569 (1996).

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between his recurrence of disability and an employment injury.⁴ Since appellant has not established that he had sustained an employment injury, the Office properly denied his claim for a recurrence of disability.

The decisions of the Office of Workers' Compensation Programs dated May 7, 1997 and November 7, 1996 are affirmed.⁵

Dated, Washington, D.C.
April 9, 1999

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

⁴ *Lourdes G. Davila*, 45 ECAB 139 (1993).

⁵ The Board notes that the Office stated that appellant's request for an oral hearing was denied on the grounds of untimeliness, but a review of the case record fails to reveal appellant's request.